IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DAWN GARNER SMITH, **Plaintiff,** **v.** **OFFICER GARY AUGUSTINE, OFFICER MATTHEW BEJGROWICZ, OFFICER CHRISTOPHER BURNE, UNKNOWN POLICE OFFICERS, and VILLAGE OF ROMEOVILLE,** **Defendants.**	**Case No. 07 C 81** **Hon. Harry D. Leinenweber**

MEMORANDUM OPINION AND ORDER

Plaintiff Dawn Garner Smith (hereinafter, the "Plaintiff"), filed the instant action against the Village of Romeoville (hereinafter, the "Village") and Romeoville police officers Gary Augustine, Matthew Bejgrowicz and Christopher Burne (hereinafter, the "Individual Defendants") in connection with her arrest on January 7, 2006. Plaintiff brings federal claims under 42 U.S.C. § 1983 for excessive force, false arrest and detention, false imprisonment and failure to intervene as well as state law claims for assault, battery, intentional infliction of emotional distress, false arrest and detention, false imprisonment, malicious prosecution and failure to intervene. Plaintiff also brings a *Monell* claim under § 1983 against the Village for allegedly maintaining policies, practices and/or customs permitting the occurrence of constitutional violations. The Court has

supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(a).

The Village and the Individual Defendants filed separate Motions for Summary Judgment on all counts. After briefing on Defendants' Motions concluded, Plaintiff filed a sur-reply which attempted to introduce additional evidence and her own Motion for Summary Judgment on the issue of probable cause, neither of which change the Court's ruling on Defendants' pending Motions. For the following reasons, the Summary Judgment Motions of Defendants Augustine, Bejgrowicz and Burne, and Defendant Village of Romeoville, are GRANTED and Plaintiff's Motion for Summary Judgment is DENIED as moot.

I. BACKGROUND

The following facts are uncontested. On January 7, 2006, at approximately 6:00 p.m., a car crashed and came to rest upon railroad tracks near the intersection of 135th Street and New Avenue, just beyond the boundaries of Romeoville, Illinois. Several Romeoville police officers, firefighters and paramedics responded to the scene. Sometime after 8:00 p.m. that same evening, an Amtrak train bound for Chicago traveling between 75 and 79 miles per hour crashed into the wrecked car that was still on the railroad tracks. The train dragged the car approximately three quarters of a mile further north on the tracks before stopping with the car wedged underneath the locomotive engine. The Amtrak train

consisted of a locomotive, a café car and three passenger cars in the rear with more than 100 passengers onboard. The train was also carrying an engineer, a lead services operator, a conductor and an assistant conductor. Plaintiff was the conductor on the Amtrak train.

After this second accident, several Romeoville police officers, firefighters and paramedics responded, including the Individual Defendants and Firefighter/Paramedic Brandon Street ("Street"). When he arrived at the front of the train, Street observed that the car was lodged under the locomotive and gasoline was leaking from the car. Street then began walking along the length of the train unsuccessfully looking for a point of entry into the train so that he could check on the welfare of its passengers and determine a means of exit for passengers in case of evacuation.

Shortly after returning to the scene, Defendants Augustine and Bejgrowicz informed Defendant Burne that they would go to the rear of the train and attempt to gain access. Defendant Burne then encountered Plaintiff outside the train. The parties dispute what occurred during this encounter but they do not dispute that immediately afterwards Burne radioed to the other Romeoville police officers present, including Defendants Augustine and Bejgrowicz, "We have an uncooperative conductor. They're saying that there are no injuries. They're not allowing us on the train." At the rear

of the train, Augustine and Bejgrowicz encountered Firefighter/Paramedic Street. Augustine asked Street whether the paramedics had entered the train and Street replied, "no." Street informed Augustine and Bejgrowicz that the firefighter/paramedics needed to gain entry to the train to check on the welfare of the passengers but that the conductor had denied them entry. Augustine subsequently radioed to Burne that the conductor was locking them out of the train and said, "She's also locking the train doors and even these passengers couldn't get off if they wanted to." Shortly thereafter, Bejgrowicz radioed to Burne, "We need you at the rear of the train immediately." Based on these radio communications, Burne responded, "95 her," meaning arrest Plaintiff.

Officers Augustine and Bejgrowicz arrested Plaintiff in the vestibule area of the last train car. At the time of her arrest, Plaintiff was talking on her personal cell phone with her Amtrak supervisor, Scott Kenner ("Kenner"). Augustine told Plaintiff she was under arrest and asked her to turn around. Augustine and Bejgrowicz then each took one of Plaintiff's arms and placed her in handcuffs. While handcuffing her, the officers leaned Plaintiff forward over a gate at the back of the vestibule. After handcuffing Plaintiff, Augustine took hold of the chain on the handcuffs and brought Plaintiff to a corner of the vestibule where she remained handcuffed for approximately 20-30 minutes. The arresting officers never pushed or shoved Plaintiff. The officers

removed Plaintiff's handcuffs after Kenner asked Defendant Burne over the phone to release her so the train could resume its route to Chicago. After the officers removed the handcuffs Plaintiff walked toward the front of the train and resumed her conductor duties. Plaintiff did not request any medical attention or complain of any injuries at the scene.

Romeoville Police Lieutenant Mark Turvey ("Turvey"), who is in charge of the department's patrol, detectives and investigations divisions, received the police reports generated as a result of Plaintiff's arrest. Turvey also conducted an internal investigation of the circumstances surrounding Plaintiff's arrest in response to a complaint by Plaintiff. In the course of that investigation, Turvey interviewed 34 people, including Defendant Augustine and Plaintiff's Amtrak supervisor, Scott Kenner, and prepared a 73-page written report.

During his interview with Turvey, Defendant Augustine stated that when he ordered Plaintiff to open the door to the rear passenger car of the train at the time of the incident, Plaintiff responded that the train was federal property and she would not allow him to board. Plaintiff then exited the passenger car and locked the door behind her. Augustine also told Turvey that at the time of the incident he told Plaintiff that gasoline was leaking from the wrecked car on the tracks and that he ordered Plaintiff to get back on the train.

Scott Kenner told Turvey during his interview on February 27, 2006, that he spoke with Plaintiff on her cell phone just prior to her arrest and that he was upset with her at the time when she told him that she was not allowing police officers on the train. Kenner told Turvey that he repeatedly told Plaintiff during that phone conversation to open to train doors so that the police could complete their investigation. Kenner stated further that Amtrak conductors are instructed to allow local police and other first responders full access to the train.

Lt. Turvey also interviewed Illinois State Police Trooper Jason Shrake ("Shrake") who was present at the scene of the second accident on January 7, 2006. Shrake told Turvey that Plaintiff admitted to him after she was released from handcuffs that the train had been on lockdown, that no one was allowed on or off the train, and that only the State Police were allowed to board the train.

Based on his independent investigation, Lt. Turvey decided to pursue criminal charges against Plaintiff and he directed Romeoville Police Detective Ken Kroll ("Kroll") to contact the Will County State's Attorney to that end. On March 6, 2006, Detective Kroll signed a criminal complaint charging Plaintiff with obstructing a peace officer in violation of 720 ILCS 5/31-1(a). A Will County Circuit Court judge signed and issued a warrant for Plaintiff's arrest the same day. At no time prior to March 6,

2006, did Lt. Turvey speak with Defendants Burne, Augustine or Bejgrowicz about the decision to file a criminal complaint against Plaintiff.

Plaintiff testified at her deposition that she never denied access to the train to the Individual Defendants or any paramedics on the scene. She also testified that she never intended to keep anyone off the train and that the train doors remained open throughout the entire incident. As explained above, Plaintiff's testimony is contradicted by the Individual Defendants, Firefighter/Paramedic Street, her Amtrak supervisor, and Illinois State Police Trooper Shrake.

II. STANDARD OF REVIEW

Summary judgment is appropriate "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Spath v. Hayes Wheels Intern.-Indiana, Inc.*, 211 F.3d 392, 396 (7th Cir., 2000). In ruling on a summary judgment motion, "facts must be viewed in the light most favorable to the nonmoving party only if there is a 'genuine' dispute as to those facts." *Scott v. Harris*, 550 U.S. 372 (2007). A genuine issue of material fact is not demonstrated by the mere existence of "some alleged factual dispute between the parties," *Anderson v. Liberty Lobby,*

Inc., 477 U.S. 242, 247 (1986), or by "some metaphysical doubt as to the material facts," *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Rather, a genuine issue of material fact exists only if a reasonable finder of fact could return a decision for the nonmoving party based upon the record. *See Insolia v. Phillip Morris Inc.*, 216 F.3d 596, 599 (7th Cir., 2000).

III. ANALYSIS

A. Federal Claims Brought Pursuant to 42 U.S.C. § 1983.

1. False Arrest and False Imprisonment.

Plaintiff's § 1983 claims against the Individual Defendants for false arrest and false imprisonment turn on whether or not Plaintiff's arrest was supported by probable cause. If probable cause existed, these claims fail as a matter of law. *See Mustafa v. City of Chicago*, 442 F.3d 544, 547 (7th Cir., 2006); *Potts v. City of Lafayette, Ind.*, 121 F.3d 1106, 1113 (7th Cir., 1997); *Jones v. Village of Villa Park*, 815 F.Supp. 249, 253 (N.D. Ill., 1993).

Probable cause exists "if the facts and circumstances within the arresting officer's knowledge are sufficient to warrant a prudent person to conclude that the suspect has committed, is committing, or was about to commit a crime." *Devenpeck v. Alford*, 543 U.S. 146, 151 (2004). Because endless scenarios confront police officers in their daily regimen, courts evaluate probable

cause not on the facts as an omniscient observer would perceive them but on the facts as they would have appeared to a reasonable person in the position of the arresting officer. *Sheik-Abdi v. McClellan*, 37 F.3d 1240, 1246 (7th Cir., 1994). Furthermore, it is well-settled that the identification or report of a single, credible victim or eyewitness can provide the basis for probable cause. *See Woods v. City of Chicago*, 234 F.3d 979, 996 (7th Cir., 2000); *Gramenos v. Jewel Companies, Inc.*, 797 F.2d 432, 439 (7th Cir., 1986). While the question of probable cause typically falls within the province of the jury in a civil suit, "a conclusion that probable cause existed as a matter of law is appropriate when there is no room for a difference of opinion concerning the facts or the reasonable inferences to be drawn from them." *Sheik-Abdi*, 37 F.3d at 1246; *see also Gramenos*, 797 F.2d at 438.

The relevant Illinois statute, 720 ILCS 5/31-1, entitled "Resisting or obstructing a peace officer or correctional institution employee," provides:

> (a) A person who knowingly resists or obstructs the performance by one known to the person to be a peace officer or correctional institution employee of any authorized act within his official capacity commits a Class A misdemeanor.

At least three undisputed facts establish that Defendants Burne, Augustine and Bejgrowicz had probable cause to arrest Plaintiff for obstruction under the Illinois statute. First, shortly after the train crash, Burne told Augustine and Bejgrowicz over the radio,

"We have an uncooperative conductor. They're saying that there are no injuries. They're not allowing us on the train." Second, at the rear of the train, Firefighter/Paramedic Street informed Augustine and Bejgrowicz that the conductor had denied paramedics entry to the train. Third, after speaking to Street, Augustine radioed to Burne that the conductor was locking them out of the train and stated, "She's also locking the train doors and even these passengers couldn't get off if they wanted to." Burne was entitled to rely on the statements of Augustine, and Augustine and Bejgrowicz were entitled to rely on the statements of Street and Burne, regardless of whether those statements were correct, in finding probable cause that Plaintiff was obstructing police officers, firefighters and paramedics. *See Spiegel v. Cortese*, 196 F.3d 717, 723 (7th Cir., 1999)*; Gramenos*, 797 F.2d at 439.

In an attempt to create a material issue of fact, Plaintiff offers the following five facts, some of which are disputed, which she claims refute a finding of probable cause: (1) Plaintiff's testimony that the train doors were not locked; (2) that she did not intend to prevent emergency personnel from boarding the train; (3) she never physically resisted the officers; (4) she is a "peace officer;" and (5) the Individual Defendants never conferred with State Police before arresting her. These facts, even if true, are irrelevant and do not undermine a finding that probable cause existed at the time of her arrest as a matter of law.

It is well-settled that, once probable cause is established, police are under no obligation to conduct further investigation to ferret out exculpatory evidence and they may simply arrest the suspect. *See Mustafa*, 442 F.3d at 548; *Woods*, 234 F.3d at 997 ("police officers have no constitutional obligation to conduct any further investigation before making an arrest if they have received information from a reasonable credible victim or eyewitness sufficient to supply probable cause"); *Spiegel*, 196 F.3d at 723. Thus, the Individual Defendants were not required to ascertain Plaintiff's intent or "peace officer" status, or personally check whether the train doors were locked, or confer with the State Police, once they heard the statements from other emergency personnel indicating that Plaintiff had denied them access and locked the train. This is especially true considering the statements were made by emergency personnel in the course of performing their jobs. *See Gramenos*, 797 F.2d at 439 (recognizing that "[p]olice have reasonable grounds to believe a guard at a supermarket [because] a guard is not just any eyewitness"). Because, as a matter of law, probable cause existed at the time of Plaintiff's arrest, her § 1983 claims for false arrest and imprisonment fail.

2. Excessive Force.

Plaintiff also brings an excessive force claim pursuant to § 1983 against the Individual Defendants in connection with her

arrest. The parties do not dispute that Defendants Augustine and Bejgrowicz arrested Plaintiff in the vestibule of the last train car by placing her arms behind her back, leaning her over a gate in the vestibule, and handcuffing her. Nor do the parties dispute that Defendant Augustine took hold of the chain between the handcuffs and led Plaintiff to a corner of the vestibule where she remained in handcuffs approximately 20-30 minutes. The parties agree that Plaintiff did not request any medical attention at the scene and there is no evidence that she ever complained to the officers that the handcuffs were too tight, but she visited the hospital several hours after her arrest complaining of wrist and abdominal pain. Plaintiff admits that the officers never pushed or shoved her.

Plaintiff also alleges certain additional, disputed, facts in support of her excessive force claim. First, according to Plaintiff, Defendant Augustine knocked some personal items out of her hands while handcuffing her, Augustine screamed at her while she was handcuffed, and the handcuffs were too tight. Even assuming the truth of these disputed facts, when taken together with the undisputed facts surrounding her arrest, it is clear that no reasonable fact finder could find in favor of Plaintiff on her excessive force claim.

Claims that police officers used excessive force during an arrest are evaluated under an objective reasonableness standard

judged from the perspective of a reasonable officer on the scene, rather than 20/20 hindsight. *Tibbs v. City of Chicago*, 469 F.3d 661, 665 (7th Cir., 2006), citing *Graham v. Connor*, 490 U.S. 386, 394-95 (1989). When considering an excessive force claim, the Court should also consider whether the suspect was interfering or attempting to interfere with the officers' execution of their duties. *Jacobs v. City of Chicago*, 215 F.3d 758, 773 (7th Cir., 2000). Excessive force necessarily requires some physical force or threat thereof, *see McNair v. Coffey*, 279 F.3d 463, 467 (7th Cir., 2002), but not every push or shove is a 4th Amendment violation, *see Horton v. Wilson*, No. 00-6179, 2002 WL 31719596, at *5 (N.D.Ill., Dec. 4, 2002). Moreover, even where the arrestee is injured, there is no constitutional violation without evidence that the police intended to injure the arrestee gratuitously. *See Covington v. Smith*, 259 Fed.Appx. 871, 875 (7th Cir., 2008).

Even assuming that Plaintiff's disputed allegations are true, it is clear that the amount of physical force the officers used to effect her arrest was *de minimis*. The officers' decision to handcuff Plaintiff and move her to a corner of the vestibule was objectively reasonable, especially considering their belief at the time that she had been obstructing and interfering with emergency personnel and the performance of their duties. *See Covington*, 259 Fed.Appx. at 875 (officers' decision to handcuff, lift and force plaintiff into chair was reasonable where plaintiff had refused to

cooperate with police and interfered with their execution of an arrest warrant).

Even if Plaintiff's handcuffs were too tight, it is undisputed that she never complained to the officers at the time of her arrest and there is no evidence that she asked that they be loosened. Nor is there any evidence, other than her deposition testimony that the handcuffs left a temporary welt on her wrist, that Plaintiff suffered any actual injuries as a result of the handcuffing. Pain from tight handcuffing, in the absence of additional injuries, is insufficient to support an excessive force claim. *See Tibbs*, 469 F.3d at 666; *Cusack v. City of Des Plaines*, No. 06-2507, 2007 WL 2484325, at *4 (N.D.Ill., Aug, 29, 2007).

The other acts of which Plaintiff complains are likewise insufficient to support her excessive force claim. The officers' acts of leaning her over the vestibule railing and knocking items out her hands were incidental to her arrest and objectively reasonable. An officer screaming and yelling does not constitute excessive force because it does not involve physical force. *See McNair*, 279 F.3d at 467 (there is no excessive force without some "physically abusive governmental conduct"). Based on the evidence, no reasonable fact finder could find in favor of Plaintiff on her excessive force claim.

3. Failure to Intervene.

Plaintiff's § 1983 failure to intervene claim against the Individual Defendants is premised on her other § 1983 claims for false arrest, false imprisonment and excessive force. An officer who is present and fails to intervene to prevent other law enforcement officers from infringing the constitutional rights of citizens is liable under § 1983 if that officer had reason to know: (1) that excessive force was being used, (2) that a citizen has been unjustifiably arrested, or (3) that any constitutional violation has been committed by a law enforcement official; and the officer had a realistic opportunity to intervene to prevent the harm from occurring. *Chavez v. Illinois State Police*, 251 F.3d 612, 652 (7th Cir., 2001). Because Plaintiff cannot prove an underlying constitutional violation, the Individual Defendants cannot be held liable for failing to intervene. *Id.*

4. Qualified Immunity.

The Individual Defendants argue that qualified immunity protects them from liability for Plaintiff's § 1983 claims. The doctrine of qualified immunity shields government officials from civil liability when they perform discretionary functions to the extent their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *See Lanigan v. Village of East Hazel Crest*, 913 F.Supp. 1202, 1206 (N.D.Ill., 1996). Thus, the Individual Defendants are

entitled to qualified immunity if their actions did not violate Plaintiff's constitutional rights, or at least not any constitutional rights that were clearly established at the time of Plaintiff's arrest. *See Pearson v. Callahan*, 129 S.Ct. 808 (2009). Here, Plaintiff has presented no evidence of false arrest, false imprisonment, or excessive force, so she has failed to show any constitutional violation and the Individual Defendants are entitled to qualified immunity on those claims.

5. Monell Claim Against the Village.

Plaintiff brings a § 1983 *Monell* claim against the Village for allegedly maintaining policies, practices and/or customs permitting constitutional violations such as the false arrest, false imprisonment and excessive force of which Plaintiff complains. In order to prove her *Monell* claim, Plaintiff must establish (1) that she suffered a constitutional injury, *e.g.*, that she was a victim of false arrest, false imprisonment, or excessive force, and (2) that the Village authorized or maintained a custom of approving the unconstitutional conduct. *See Thompson v. Boggs*, 33 F.3d 847, 859 (7th Cir., 1994). If Plaintiff fails to show a constitutional violation, her *Monell* claim necessarily fails. *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986); *Treece v. Hochstetler*, 213 F.3d 360, 364 (7th Cir., 2000). The Supreme Court recognized in *Heller*, "[i]f a person has suffered no constitutional injury at the hands of the individual police officer, the fact that the

departmental regulations might have *authorized* the use of constitutionally excessive force is quite beside the point." *City of Los Angeles*, 475 U.S. at 799 (emphasis in original). Because, for the reasons stated above, Plaintiff cannot show any underlying constitutional violation, her *Monell* claim against the village fails.

B. State Law Claims.

1. False Arrest and False Imprisonment.

Like her federal claims, Plaintiff's state law claims against all Defendants for false arrest and false imprisonment turn on whether probable cause existed for her arrest. *Jones*, 815 F.Supp. at 253; *Ross v. Mauro Chevrolet*, 861 N.E.2d 313, 317 (Ill.App.Ct., 2006). If probable cause existed, these state law claims fail as a matter of law. See *Ross*, 861 N.E.2d at 317. For the reasons stated above, the Court finds that probable cause existed for Plaintiff's arrest so her state law false arrest and imprisonment claims fail.

Moreover, Defendants argue that the Illinois Local Governmental and Governmental Employees Tort Immunity Act shields them from liability for Plaintiff's state law claims for false arrest, false imprisonment and failure to intervene. That Act provides, in part, "[a] public employee is not liable for his act or omission in the execution or enforcement of any law unless such act constitutes willful and wanton conduct." 745 ILCS 10/2-202.

The Tort Immunity Act defines willful and wanton conduct as "a course of action which shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others or their property." 745 ILCS 10/1-210.

The Court's finding that probable cause supported both Plaintiff's arrest and prosecution negate any possibility that the officers acted in a willful and wanton manner. *See Ross*, 861 N.E.2d at 320. Accordingly, the Immunity Act protects the Individual Defendants from any liability for Plaintiff's state law false arrest, false imprisonment, and failure to intervene claims. *Id.*

2. Assault and Battery.

Plaintiff brings state law claims for assault and battery against all Defendants in connection with her arrest. Under Illinois law, "[a] person commits an assault when, without lawful authority, he engages in conduct which places another in reasonable apprehension of receiving a battery." 720 ILCS 5/12-1. A person commits battery if he intentionally or knowingly without legal justification and by any means, causes bodily harm to an individual or makes physical contact of an insulting or provoking nature with an individual. 720 ILCS 5/12-3.

The Illinois Tort Immunity Act shields Defendants from liability for assault and battery unless their conduct was willful

and wanton. *See* 745 ILCS 10/2-202. The arresting officers' actions are not willful and wanton where the manner of arrest was objectively reasonable and the plaintiff was not injured. *See Smith v. City of Chicago*, 242 F.3d 737, 744 (7th Cir., 2001) (affirming summary judgment in favor of arresting officers on state law battery claim where the manner of arrest was reasonable and only evidence of injury was plaintiff's testimony that he experienced wrist pain from handcuffs). As discussed above, the manner of Plaintiff's arrest was objectively reasonable and there is no evidence, other than her testimony, that she suffered any injury from her arrest. Thus, the Individual Defendants' did not act in a willful and wanton manner when arresting Plaintiff and the Illinois Tort Immunity Act shields them from liability for assault and battery in connection with her arrest.

3. Malicious Prosecution.

To succeed on her state law malicious prosecution claim against all Defendants, Plaintiff must prove: (1) that she was subject to judicial proceedings, (2) for which there was no probable cause, (3) the Defendants instituted or continued the proceedings maliciously, (4) the proceedings were terminated in Plaintiff's favor, and (5) damages. *See McCall-Bey v. Kirner*, 233 F.Supp.2d 1009, 1017 (N.D.Ill., 2002); *Ross*, 861 N.E.2d at 319. The absence of any one of these elements bars Plaintiff's claim. *Swick v. Liautaud*, 662 N.E.2d 1238, 1242 (Ill., 1996); *see also*

Sparing v. Village of Olympia Fields, 77 F.Supp.2d 891, 901 (N.D.Ill., 1999).

As explained above, the undisputed facts establish probable cause for Plaintiff's arrest. Moreover, where "no intervening event occur[s] between the officers' arrest of plaintiff . . . [and the] filing of the misdemeanor charge against plaintiff . . . that would have contradicted their probable cause finding," the prosecution is not malicious. *See Ross*, 861 N.E.2d at 320; *see also Johnson v. Target Stores, Inc.*, 791 N.E.2d 1206, 1221 (Ill.App.Ct., 2003).

Plaintiff presents no evidence of any intervening event that would have undermined the probable cause existing at the time of her arrest. Lt. Turvey made the decision to file a criminal complaint against Plaintiff and it undisputed that his internal investigation yielded multiple statements from multiple witnesses indicating that Plaintiff had locked the train doors and refused to allow emergency personnel to board. Defendant Augustine stated during his interview with Lt. Turvey that Plaintiff locked him out of the train after he ordered her to open the door. Illinois State Trooper Shrake told Lt. Turvey that, after Plaintiff was released from handcuffs, she admitted to him that the train had been on lockdown and that no one was allowed on or off the train. Plaintiff's Amtrak supervisor, Scott Kenner, told Lt. Turvey that during his phone conversation with Plaintiff immediately prior to

her arrest, he repeatedly told Plaintiff to open the train doors for the police officers. Plaintiff does not dispute that Lt. Turvey's investigation yielded these witness statements which are entirely consistent with the undisputed facts forming the basis of probable cause at the time of Plaintiff's arrest.

Moreover, Plaintiff has presented no evidence that the Defendants maliciously commenced criminal proceedings against her. Under Illinois law, "[a] defendant is considered to have commenced criminal proceedings if he initiated a criminal proceedings or his participation was of so active and positive a character as to amount to advice and cooperation." *Fabiano v. City of Palos Hills*, 784 N.E.2d 258, 270 (Ill.App.Ct., 2002), citing *Denton v. Allstate Ins. Co.*, 504 N.E.2d 756 (Ill.App.Ct., 1986); *McCall-Bey*, 233 F.Supp.2d at 1017. Liability for malicious prosecution extends to police officers "who played a significant role in causing the prosecution of plaintiff," and plaintiff must show that the officers used improper influence on the prosecutor or made knowing misstatements to the prosecutor in order to secure prosecution. *McCall-Bey*, 233 F.Supp.2d at 1017.

Here, the undisputed facts show no such involvement by the Individual Defendants in Plaintiff's prosecution. It is undisputed that Lt. Turvey made the decision to file a criminal complaint against Plaintiff, and at no time prior to the filing of charges did Lt. Turvey speak with any of the Individual Defendants about

his decision. Although Turvey interviewed Defendant Augustine in connection with his internal investigation, there is no evidence that the Individual Defendants had any contact whatsoever with the Will County State's Attorney's Office in connection with Plaintiff's criminal case. Nor is there any evidence that any of the Individual Defendants used improper influence on, or made misstatements to, any prosecutor in order to secure the prosecution of Plaintiff.

Plaintiff also fails to show any evidence of malice on the part of the Individual Defendants. Plaintiff attempts to manufacture malice by alleging, with no support in the record, that Defendants waited to file criminal charges until after learning that Plaintiff had hired an attorney to file a civil suit in connection with her arrest. Plaintiff's argument ignores two facts. First, the Defendants did not file criminal charges against Plaintiff and, as explained above, Plaintiff has made no showing that the Defendants played any role in the prosecutors' decision to prosecute her. Second, there is no evidence in the record that Defendants were even aware that Plaintiff had hired an attorney, let alone that such knowledge motivated them to seek prosecution of Plaintiff. Accordingly, no reasonable fact finder could rule in favor of Plaintiff on her state law malicious prosecution claim.

4. Intentional Infliction of Emotional Distress.

Plaintiff brings a state law claim for intentional infliction of emotional distress (the "IIED claim") against all Defendants. To prove this claim, Plaintiff must satisfy three requirements: (1) the conduct involved must be truly extreme and outrageous, (2) the actor must either intend that his conduct inflict severe emotional distress, or know that there is at least a high probability that his conduct will cause severe emotional distress, and (3) the conduct must in fact cause severe emotional distress. *Puch v. Village of Glenwood, Ill.*, No. 05-1114, 2008 WL 4442610, at *9 (N.D.Ill., Sept. 25, 2008), citing *Lewis v. School Dist. #70*, 523 F.3d 730, 746 (7th Cir., 2008). Plaintiff's IIED claim fails because Plaintiff does not support her assertion of emotional distress with a single citation to the record. In fact, Plaintiff has failed to present any evidence whatsoever showing that she can establish any element of her IIED claim. Plaintiff has an obligation to "identify with particularity the evidence that precludes summary judgment." *See Puch*, 2008 WL 4442610, at *9, citing *Richards v. Combined Ins. Co. of America*, 55 F.3d 247, 251 (7th Cir., 1995) ("It is not our task, or that of the district court, to scour the record in search of a genuine issue of triable fact."). Plaintiff has not done that here so her claim for intentional infliction of emotional distress fails.

5. Respondeat Superior Liability.

Plaintiff's state law claims against the Village for false arrest, false imprisonment, malicious prosecution, failure to intervene, assault, battery and intentional infliction of emotional distress rely on the *respondeat superior* theory of liability. Under Section 2-109 of the Tort Immunity Act, "[a] local public entity is not liable for an injury resulting from an act or omission of its employee where the employee is not liable." 745 ILCS 10/2-109. Because, for the reasons stated above, no reasonable fact finder could find that the Individual Defendants liable for Plaintiff's state law claims, the Village is not liable for them either.

IV. CONCLUSION

For the reasons stated herein, the Summary Judgment Motions of Defendants Augustine, Bejgrowicz and Burne, and Defendant Village of Romeoville, are GRANTED and Plaintiff's Motion for Summary Judgment is DENIED as moot.

IT IS SO ORDERED.

Harry D. Leinenweber, Judge
United States District Court

DATE: